IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 388 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

Nos. 1 to 5 No

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CHANDULAL AMRATLAL MODI

Versus

IBRAHIM MUSAJI MOKAMJIWALA

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Appearance:

MR MD PANDYA for Petitioners

NOTICE SERVED for Respondent No. 1

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 16/11/98

ORAL JUDGEMENT

This is landlord's revision under section 29(2) of the Bombay Rent Act, 1947.

The brief facts are that the revisionist filed a suit for eviction of the respondent from the disputed accommodation on several grounds. The first ground was that the tenants were in arrears of rent for more than

six months and failed to pay the same within a month of service of notice of demand and eviction. Another ground was that the defendants have sublet the disputed accommodation. The next ground was that the defendants were not using the disputed premises since eight months before the the institution of the suit. Another ground was that the premises in suit was bonafide and reasonably required for personal use of the landlord to provide office to his practicing son and another son who is engineer. Another ground was that the defendants have acquired an alternative accommodation for their purpose. The next ground was that the defendants have committed breach of the terms of tenancy and have used the premises for residential purpose and that too by the subtenants though the premises was letout for business purpose.

The suit was contested by the defendants challenging the validity of the notice and also maintainability of the suit. It was averred that the suit was bad for non joinder of other heirs of the deceased tenant. The dispute of the standard rent was also raised.

The premises was let out on monthly rent of Rs.30/- to the deceased tenant who was father of the defendant no.1 and husband of the defendant no.2 for business of printing screens. The other taxes including education cess and electricity charges were in addition to Rs.30/- p.m. The other allegations made by the revisionists were denied in the written statement.

The Trial Court in a very casual manner and without applying its mind to the facts and the law involved in the case found that the tenants were not in arrears of rent for more than six months. The plea of subletting was upheld by the Trial Court. It further found that the premises was required reasonably and bonafide by the landlord for his personal use and that the defendants have acquired alternative suitable accommodation for their purpose. It was also found that the defendants in contravention of terms of tenancy have changed the user of the premises from business purposes to residential purposes. The standard rent was fixed at Rs.30/- p.m. besides municipal tax, education cess and electricity charges. It also found that the suit premises was not used by the defendants and that the suit is not bad for non joinder of other heirs of the deceased tenant. With these findings the suit for eviction was decreed so also for mesne profits etc.

The tenants preferred an appeal which was

allowed. The decree for eviction was set aside.The landlord filed cross objection in the appeal which was dismissed. It is, therefore, this revision.

It is not a case of concurrent finding recorded by the two Courts below on each issue. The appellate Court has reversed the judgment and decree of the Trial Court so far as it relates to eviction of the tenants. The appellate Court however agreed that the suit is not bad for non joinder of the necessary parties. On this point, the two Courts below have given concurrent findings. On the plea of subletting, the appellate Court has reversed the finding of the Trial Court. It also reversed the Trial Court's finding that the suit premises is required by the landlord for his personal use and occupation. Likewise it has reversed the finding of the Trial Court that the suit premises has not been used by the tenants for continuous period of six months prior to the institution of the suit. It also reversed the finding of the Trial Court that the defendants have changed the user of the suit premises.

The appellate Court has rightly observed that the suit is not governed by section 12(3)(a) of the Bombay Rent Act, rather, it is governed by section 12(3)(b) of the Act. The view taken by the lower appellate Court on this point is not incorrect. Since the landlord himself alleged that the defendants were to pay Rs.30/- p.m. as rent besides municipal taxes, education cess and electricity charges, the rent was not payable monthly and as such section 12(3)(a) of the Act is not attracted. So far as the dispute regarding standard rent is concerned this dispute was not a bonafide dispute raised by the tenants for the obvious reason that in the earlier HRP Suit No.1042/62 between the parties standard rent was already fixed. If the standard rent was fixed earlier it could not be reagitated by moving separate application subsequently. However, the dispute of standard rent which was raised in the Trial Court was decided by the Trial Court fixing standard rent to be Rs.30/- besides taxes, education cess and electricity consumption charges. As such, there existed no bonafide dispute regarding standard rent. However, since the rent was not payable monthly in asmuch as even according to the plaint the tenants were obliged to pay municipal taxes, education cess etc., in addition to rent, the case could not have been covered under section 12(3)(a) of the Act. On the other hand, section 12(3)(b) was attracted. The Trial Court found that the entire rent due was deposited in the Trial Court on the first date of hearing and thereafter it was regularly deposited by the defendants.

The appellate Court also found that a sum of Rs.3840/became due as rent from the tenants since 1.7.1971, whereas Rs.3935/- were deposited till hearing of the appeal. Thus, the entire rent was regularly deposited by the defendants in the Trial Court as well as in appeal, and therefore, they were entitled to the benefit of section 12(3)(b) of the Act. The suit for eviction on this ground, therefore, could not succeed. The plea was therefore rightly turned down by the two Courts below that the tenants could be evicted being defaulters in payment of rent. The cross objection of the landlord for these reasons was rightly rejected by the lower appellate Court.

On the question of subletting the finding of the Trial Court is quite casual. It has failed to apply its mind to the essential conditions of subletting that exclusive possession was not proved to have been transferred by the defendants no. 1 and 2 to the subsequently added defendants no. 3 to 8 , nor was there any evidence to show that this transfer was for valuable consideration and that monetary benefits were being derived by the defendants no. 1 and 2, surprisingly enough the plaintiff remained unsuccessful in serving the defendants no. 3 to 8, the summons of the suit and ultimately they were deleted. In such state of affairs affairs on mere surmises and conjectures that some of them were sleeping in room in the night, the plea of sub-tenancy was illegally upheld by the Trial Court. In the absence of cogent evidence on transfer of exclusive possession and the transfer being for valuable consideration the lower appellate Court was justified in reversing the judgment of the Trial Court on this point and was correct in holding that the plea of subletting, assignment etc. was not proved by the landlord.

The lower appellate Court has also rightly observed that the landlord failed to establish that the defendants committed breach of the terms of tenancy. The rent note though in existence was not brought on record. Some copies of decrees of the earlier suits were filed. The lower appellate Court on proper appraisal of the evidence on record and recital in those decrees rightly concluded that it is not proved by cogent evidence that the purpose of tenancy was for business purpose and for no other purpose. This finding of fact does not suffer from any illegality. If the premises in suit could be used for business purpose as well as for residential purpose, there was no breach of terms of tenancy if the premises was also used for residential purpose. This finding of the lower appellate Court is also not contrary

to law.

The lower appellate Court has rightly observed that it is not proved that the defendants did not use the premises for continuous period of six months prior to the institution of the suit. The Commissioner's report was taken into consideration. If office for business was not found by the Commissioner it cannot be said that the defendants did not use the accommodation. Even the Commissioner found that some people were residing in the premises on behalf of the defendants. The plea of subletting was already turned down by the lower appellate Court. If the tenants did not commit breach of the terms of tenancy they were justified in using the premises for residential purpose. Consequently, if the Commissioner did not find that the premises was in use and occupation of the defendants on the date of his visit it could not be held by the Trial Court that the premises was not used by the tenants. The lower appellate Court therefore committed no illegality in holding that the premises was used by the tenants.

The lower appellate Court has also rightly concluded that the premises was not bonafide required by the landlord for his personal use. The reasonable and bonafide requirement alleged by the landlord was imaginary. He concealed material facts and during cross objection he had to admit that he has six other properties in his occupation. Consequently, it cannot be said that the premises was bonafide and reasonably required by the landlord either for his occupation or for providing office to his two sons practicing in law and practicing in engineering. There is no evidence from the landlord that no such room out of six properties can be spared to his two sons for establishing their office. As such this ground was also rightly negatived by the lower appellate Court.

The lower appellate Court has likewise given correct finding that the tenants did not acquire suitable accommodation for their use. The defendants have admitted that their business expanded and as such additional accommodation was acquired. If the disputed accommodation was not abondoned and it was in use of the tenants mere acquisition of additional accommodation for their requirement cannot be said to be acquisition of sufficient and alternative accommodation for the purposes of the tenants. Thus, on this point also the finding of the lower appellate Court does not suffer from any infirmity or illegality.

In view of the above discussions, it is clear that the decree for eviction was rightly reversed by the lower appellate Court. It was also justified in dismissing the cross objection of the landlord. The revision in these circumstances is devoid of merit and has to fail. The revision is hereby dismissed. No order as to costs.

Sd/-
(D.C.Srivastava, J)

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m.m.bhatt